

**ONONDAGA COUNTY WATER AUTHORITY
PROCUREMENT DISCLOSURE POLICY
(ADOPTED AUGUST 2006)**

PURPOSE

As a public benefit corporation, the Onondaga County Water Authority (“OCWA”) must conduct its operations in a manner that best serves the interests of its customers and the general public. OCWA expect all Board Members, officers, and employees to comply and cause OCWA to comply with all laws and regulations governing business transactions. In furtherance of this policy, the Board hereby deems it necessary that, with respect to any procurement, OCWA will have:

- Issued and complied with its policies and procedures with respect to permissible contacts and any determination made for violations thereof and has included such policies and procedures as part of the solicitation/bid documents;
- Issued policies and procedures in connection with the recording of all “contacts” received during the “restricted period” as those terms are defined under SFL §§ 139-j and 139-k, and is not aware of any “contacts” that were not recorded as required and included in the procurement record;
- Received from all Vendors the required (i) disclosure regarding prior findings of non-responsibility for violations of SFL §§ 139-j and 139-k; (ii) written affirmation of understanding and agreement to comply with OCWA’s policies and procedures relating to permissible contacts; and (iii) including such documentation in the procurement;
- Included in the contract a provision authorizing termination if the certification referenced above is found to be intentionally false or intentionally incomplete;
- Reviewed the New York State Office of General Services published list of non-responsible and disbarred vendors for violations of SFL §§ 139-j and 139-k and considered such information in its determination of responsibility of the proposed vendor;
- Except as otherwise indicated, found no knowing and willful violations of the requirements regarding permissible contacts or other provisions of SFL §§ 139-j and 139-k;
- Except as otherwise indicated, found no provision to OCWA by a vendor of intentionally false or intentionally incomplete information relative to SFL §§ 139-j and 139-k;

- If applicable, documented in the procurement record (i) the basis for finding the proposed vendor in the procurement non-responsible for violations of SFL §§ 139-j and 139-k; (ii) the due process afforded such vendor; and (iii) that such finding was reported to OGS, as required;

ARTICLE 1 DEFINITION

As used herein, the following terms shall have the meaning set forth below:

1. Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, the purchase or lease of real property or an acquisition of an interest in real property, that is the subject of OCWA Procurement.

2. Contacts

Any oral, written or electronic communication with OCWA under any circumstances where a reasonable person would infer that the communication was intended to influence OCWA's Procurement.

3. OCWA's Procurement

(a) The preparation or terms of the specifications, bid documents, request for proposals, or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial, or disapproval of a Procurement Contract, or (e) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the Procurement Contract as it was finally awarded), renewal or extension of a Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Vendor.

4. Impermissible Contacts

Contacts made by a Vendor shall be considered impermissible if the Vendor fails to satisfy the requirements of Article 4 and Article 5 hereof.

5. Vendor

The individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts OCWA about OCWA's Procurement during the Restricted Period of such Procurement.

6. Permissible Contacts

Contacts made by a Vendor shall be considered permissible if the Vendor satisfies the requirements of Article 4 and Article 5 hereof.

7. Procurement Contract

Any contract or other agreement for an Article of Procurement involving an estimated annualized expenditure in excess of Fifteen Thousand Dollars (\$15,000). Grants, article eleven-B state finance law contracts (i.e., any contract providing for a payment under a program appropriation to a not-for-profit corporation), intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions shall not be deemed Procurement Contracts.

8. Procurement Officer

This term shall have the meaning set forth in Article 3 hereof.

9. Procurement Record

This term shall have the meaning set forth in Article 6 hereof.

10. Proposal

Any bid, quotation, offer or response to OCWA’s solicitation of submissions relating to a procurement.

11. Restricted Period

The period of time commencing with the earliest written notice, advertisement or solicitation of a proposal or bid, or any other method for soliciting a response from Vendors intending to result in a procurement contract and ending with the final contract award and approval by OCWA.

12. Solicitation Materials

This term shall have the meaning set forth in paragraph (a) of Article 4 hereof.

**ARTICLE 2
ETHICS OFFICER**

On an annual basis, OCWA’s Board shall appoint a Chairperson of the Ethics Board established in OCWA’s Code of Ethics Policy. The appointed Chairperson shall be OCWA’s “Ethics Officer” for purposes of this Policy.

ARTICLE 3
PROCUREMENT OFFICERS
(AUTHORIZED AUTHORITY CONTACT PERSONS)

OCWA's Board here delegates to the Executive Director the power to select a "Procurement Officer" for each and every OCWA Procurement (collectively, the "Procurement Officers"). The Executive Director may either select the Procurement Officer at the time the Procurement commences or select a Procurement Officer in advance for each type or category of Procurement. Such Procurement Officer(s) shall be the designated "contact" person for Vendors during the Restricted Period surrounding each Procurement.

ARTICLE 4
CONTACTS BY VENDORS

All Contacts between a Vendor and OCWA during the Restricted Period for each Procurement shall be made through the applicable Procurement Officer, unless one of the following exceptions applies:

- (a) The submission of written proposals in response to a request for proposals, invitation for bids or any other method of soliciting a response from Vendors intending to result in a Procurement Contract (collectively, "Solicitation Materials");
- (b) The submission of written questions to a designated contact set forth in any Solicitation Materials, when all written questions and responses are to be disseminated to all Vendors who have expressed interest in the Solicitation Materials;
- (c) Participation in a conference provided for in any Solicitation Materials;
- (d) Complaints made in writing to the Executive Director by a Vendor regarding the failure of the applicable Procurement Officer to respond in a timely manner to authorized Vendor Contacts, provided that such written complaints become part of the Procurement Record;
- (e) Vendors who have been tentatively awarded a contract and are communicating with OCWA for the sole purpose of negotiating the contract, so long as the Contact occurs after the Vendor has received notice of the tentative award;
- (f) Contact between designated OCWA staff and a Vendor in which the Vendor requests the review of a procurement award;

- (g) Contacts by Vendors in protests, appeals or other review proceedings before OCWA seeking a final administrative determination, or in a subsequent judicial proceeding;
- (h) Complaints of alleged improper conduct in an OCWA Procurement to the Attorney General, Inspector General, District Attorney, or court of competent jurisdiction; or
- (i) Written complaints to the State Comptroller's Office during the process of contract approval, when the State Comptroller's approval is required by law, provided that such written complaints become part of the Procurement Record; and
- (j) Complaints of improper conduct in an OCWA Procurement submitted by a municipal agency or local legislative body to the State Comptroller's Office.

The Statutes and this Policy permit communications between Vendors and OCWA prior to the Restricted Period in the form of a request for information ("RFI") by OCWA and the response thereto by the Vendor. The RFI must be used as a means to collect information upon which to base a decision by OCWA to proceed with an OCWA Procurement and not as a tool employed to award the Procurement Contract.

ARTICLE 5 OTHER PROHIBITED VENDOR ACTIVITIES

In addition to utilizing the designated Procurement Officer for all Contacts with OCWA, the following additional rules shall apply to all Vendors:

- (a) Vendors shall not attempt to influence OCWA's Procurement in a manner that would result in a violation of any State ethics/conflict of interest statute or OCWA's Code of Ethics or Conflict of Interest Policies; and
- (b) Vendors are prohibited from contacting any member, officer or employee of a governmental entity other than OCWA¹, during the Restricted Period of a Governmental Procurement, regarding OCWA's pending Procurement.

¹ This prohibition is not applicable to Contacts between a Vendor and a member of the state legislature or legislative staff about a governmental entity other than the State Legislature, or a member of the state legislature or legislative staff contacting a governmental entity about a Governmental Procurement being conducted by a governmental entity other than the state legislature, provided that the member of the state legislature or legislative staff is acting in their official capacity.

ARTICLE 6 PROCUREMENT RECORD

For each OCWA Procurement, the applicable Procurement Officer shall maintain a procurement record (“the Procurement Record”), including all written materials pertaining to the specific Procurement. Upon any Contact in the Restricted Period, the Procurement Officer shall obtain name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact and inquire and record whether the person or organization making such contact was the Vendor or was retained, employed or designated by or on behalf of the Vendor to appear before or contact OCWA about the Procurement. The Procurement Record shall include all recorded Contacts described in the prior sentence, whether such Contacts are Permissible Contacts or Impermissible Contacts. The Procurement Record shall not include communications that a reasonable person would infer are not intended to influence a Procurement. OCWA shall keep a written or electric copy of the Procurement Record for a period of six years from the end of the Restricted Period for each Procurement.

ARTICLE 7 REQUIRED DISCLOSURE

In general, all Solicitation Materials shall incorporate a summary of this policy. The following provisions offer specific methods for satisfying such requirements.

1. In all OCWA Solicitation Materials, the following statement shall appear:

Pursuant to State Finance Law §§ 139-j and 139-k, this solicitation [or other applicable identifier, i.e. “Invitation to Bid” or “Request for Proposal,” ect.] includes and imposes certain restrictions on communication between OCWA and a Vendor (contractor) during the procurement process. A Vendor/contractor is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by OCWA (“restricted period”), to other than Procurement Officer unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §§ 139-j(3)(a). OCWA’s Procurement Officer(s) for this Procurement, as of the date hereof, is identified in previous paragraph. OCWA’s employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in a rejection for contract award and in the event of two findings within a four (4) year period; the Vendor/contractor is debarred from obtaining government Procurement Contracts.

2. In all OCWA Procurement Contracts, the following provisions shall appear:

OCWA reserves the right to terminate this contract in the event it is found that the certification filed by the Vendor/contractor in accordance with State Finance Law §§ 139-k (5) was intentionally false or intentionally incomplete. Upon such finding, OCWA may exercise its termination right by providing written notification to the Vendor/contractor in accordance with the written notice terms of this contract.

3. In each response to any Solicitation Materials, the Vendor shall complete a combined Disclosure, Affirmation, and Certification (Appendix "A"), containing the following:
 - (a) Vendor Disclosure of Prior Non-Responsibility Determinations (SFL § 139-k(2));
 - (b) Vendor Affirmation of Understanding of and Agreement to OCWA Procurement Procedures (SFL §139-j(6)(b));
 - (c) Vendor Certification that all information provided to OCWA pursuant to SFL §139-k is complete, true and accurate (SFL § 139-k(5));

The Failure of a Vendor to comply with such disclosure requirements will subject the Vendor to the sanctions described in Article 10 hereof, as well as any other penalties permitted by law.

**ARTICLE 8
REQUIREMENTS OF OCWA PRIOR
TO AWARING PROCUREMENT CONTRACTS**

Prior to conducting an award of a Procurement Contract, OCWA shall:

1. Make a final determination of responsibility of the proposed awardee in accordance with OCWA's existing procedures;
2. Make a final determination of responsibility of the proposed awardee that measures compliance with the State Finance law provisions regarding (i) Permissible Contacts and (ii) disclosure of all information required in any Solicitation Materials (including, but not limited to, prior findings of non-responsibility by a Governmental Entity); and

3. Make a final determination that the procurement process for such proposed award was free from any conduct prohibited under the Public Officers Law as well as the applicable provisions of OCWA's Code of Ethics and/or Conflict of Interest Policies.

**ARTICLE 9
ALLEGED VIOLATION; PROCEDURE**

1. Any Member, officer or employee of OCWA who becomes aware that a Vendor has violated this Policy or the Statutes shall:
 - (a) Immediately notify the Ethics Officer, who shall immediately investigate the alleged violation(s).
 - (b) If, after commencing the investigation, the Ethics Officer finds that there is sufficient cause to believe the alleged violation has occurred s/he shall give the alleged violating Vendor reasonable notice (in the form of a certified letter, return receipt requested) informing him/her of the allegations and providing him/her with an opportunity to be heard regarding the allegations.
 - (c) If, following the opportunity to be heard, the Ethics Officer determines that the Vendor has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards, the Vendor shall be subject to sanctions described in Article 10 hereof.
2. The Ethics Officer shall report to the ethics officer of another Governmental Entity any violation of the statutes by a Vendor or by such other Governmental Entity's employees. The Ethics Officer shall be the person designated to receive similar communications coming from another Governmental Entity.

**ARTICLE 10
SANCTIONS**

1. Upon a finding by the Ethics Officer that a Vendor has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, officers or other employees of OCWA, the Vendor shall be subject to the following sanctions, as well as any other penalty permitted by law:

- (a) The Vendor shall be deemed “non-responsible” and such Vendor (along with its subsidiaries and any other related or successor entity) shall not be awarded the Procurement Contract, unless OCWA finds that the following special circumstances exist:
 - (i) The award to the offending Vendor is necessary to protect public property or public health or safety; and
 - (ii) The offending Vendor is the only source capable of supplying the required Article of Procurement within the necessary timeframe.
 - (b) In addition, the Ethics Officer shall notify the State Office of General Services of the finding on non-responsibility².
2. Upon finding that a Member, officer or employee of OCWA has knowingly and willfully violated this Policy, the Statutes or any other applicable procurement disclosure standards affecting Members, officers or employees of OCWA, the Ethics Officer shall immediately notify the Executive Director of OCWA or the Chair of the Board. The offending Member, officer or employee shall be subject to the sanctions described in OCWA’s Code of Ethics Policy.

DISTRIBUTION OF THIS POLICY

This Policy shall be distributed annually to OCWA’s Board and officers. It shall also be distributed annually to those employees that have the ability to affect any Procurement. It shall also be distributed to each new Board Member, officer and applicable employee as soon as practicable following commencement of such position.

² A second finding of non-responsibility under the Statutes within four (4) years will render the Vendor (along with its subsidiaries and any other related or successor entities) ineligible to submit a proposal on or be awarded any Procurement Contract for four (4) years from the date of the second final determination of non-responsibility, unless the special circumstances outlined in Section (a) of this Article 10 exists.